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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT No. 3232 OF 1996

Bank of Baroda,)
A body corporate constituted)
under the Banking Companies)
Acquisition & Transfer of)
Undertakings Act V of 1970)
having Head Office at Mandvi)
Baroda in the State of Gujrat)
and a Branch Office amongst)
other at Thakurdwar, Bombay-2 Plaintiff

Vs.

1. M/s. Qualified Agency,)
carrying on business at)
62/64 Sutar Galli,)
Bombay - 400 004.)
2. Vasant Harilal Shah)
(since deceased represented
through L.Rs.))
2(a) Shri Vijay VAsant Shah)
Indian inhabitant,residing
at C/o. Nareshkumar)
Jayantilal Patel, near)
Gujarat Vidyut Board, F-9
Sabarmati, near Railway)
Crossing, Ahmedabad.)
2(b) Kumari Dimple Vasant Shah
Indian inhabitant,residing
at C/o. Nareshkumar)
Jayantilal Patel, near)
Gujrat Vidyut Board, F-9)
Sabarmati, near Railway)

Crossing, Ahmedabad ... Defendants

Ms. Sheela K. Mistry, i/b Jayesh Patel,
advocate for plaintiff.

None for defendant.

CORAM: Mrs. RANJANA DESAI, J.

DATE : AUGUST 24, 2007.

ORAL JUDGMENT

. This suit is placed before me under the caption "Undefended suits for exparte decree". The affidavit of Shri Kamal Kumar Parihar, the Branch Manager of the plaintiff bank in lieu of examination in chief dated 16th August 2007, is on record. It is marked "X". The plaintiff has filed xerox copies of the original documents, on which the plaintiff wishes to rely. Mr. Parihar who is present in the Court has requested the Court that the plaintiff may be permitted to lead secondary evidence in respect of the said documents. It is stated in the affidavit by Shri Parihar that the originals of these documents are with the C.B.I. It is stated that the said documents were seized by the C.B.I. Mumbai in Case No. 67(A) of 1993, and therefore the xerox copies of the said documents are duly attested by Mr. Mukesh Kumar, Sub-Inspector, CBI, ACB, Mumbai. It appears that on account

of the complaint made by certain claimants, a case has been registered with CBI, and CBI is investigating the said complaint. In view of the statement made by Shri Parihar in the affidavit, the plaintiffs are permitted to lead secondary evidence in respect of the xerox copies. The list of documents on which plaintiff has placed reliance along with copies of documents, is taken on record. List of documents along with copies of documents is marked "Y" collectively. Shri Parihar, affirmed the contents of affidavit in lieu of examination in chief and the contents of the plaint, and the contents of the documents.

2. Case of the plaintiff as disclosed in the plaint and in the affidavit of Shri Parihar is that defendant No.1 is the sole proprietory concern of the second defendant. Defendant Nos. 2(a) & 2(b) are the legal heis and representatives of original defendant No. 2 (since deceased) and as such are liable to the plaintiff to the extent of the estate of original defendant No.2 coming to their hands. On or about 4th February 1992 at the introductions of one Dayalal K. Chavan who is the sole proprieter of M/s. Deekay

Discounting, Current Account No.10561 was opened by the original defendant No.2 in the name of defendant No.1 with the plaintiff's Thakurdwar Branch. The said account was to be operated by defendant No.2 as sole proprietor of defendant No.1. At the time of opening of the said account, Account Opening Form dated 4-2-1992 and specimen signature card was signed by the 2nd defendant as proprietor of the 1st defendant. Copy of the Account Opening Form of the said firm, dated 4-2-1992, and specimen signature card signed by the original second defendant, are marked as Exh.A, collectively.

3. On or about 4-2-1992 and 27-8-1993 the first defendant deposited with the plaintiff for collection various dividend warrants, which were not drawn in favour of first or original second defendant. Defendant No.1 had also deposited with the plaintiff during that time refund orders issued by various companies as also interest warrants. The said dividend warrants, refund orders and interest warrants were not payable to defendant No.1 or original defendant No.2. According to the plaintiff, the same were however deposited with the

plaintiff for the purpose of collection on the footing that defendant No.1 and/or original defendant No.2 were entitled to the monies mentioned in the respective dividend warrants, interest warrants and/or refund orders. The plaintiff's case is that, relying on the aforesaid representation made by defendant No.1 and original defendant No.2 by depositing the same in that account that they were entitled to receive the amounts mentioned in the interest warrants, dividend warrants and refund orders, the plaintiff collected the amounts of such dividend and interest warrants and/or refund orders and credited the said amounts to the account of the first defendant. After the said money was credited in the account, original defendant No. 2 caused moneys to be withdrawn from the said account from time to time.

4. According to the plaintiff in or about end of August 1993 the plaintiff received complaints from the holders of dividend warrants/interest warrants/refund orders that the dividend warrants and/or interest warrants and/or refund orders which were payable to them had not been received by them and that

the said dividend warrants, interest warrands or refund orders had been stolen. Upon enquiries made in that behalf it was revealed that original defendant No.2 had wrongfully deposited the said interest warrants, dividend warrants and refund orders in the said account for the purpose of collection though defendant No.1 and/or original defendant No.2 were not entitled to receive the same. It became clear that defendant No.2 had no title to the said amounts as mentioned in the said interest warrants, divident warrants or refund orders, and they had wrongfully received the said amounts. The plaintiff has maintained the Statement of Account in respect of the aforesaid Current A/c. No. 10561 in which all transactions relating to the said account are reflected. This statement is duly verified under the Banker's Books Evidence Act. The plaintiff has produced a copy of the same, which is marked Exhibit "B".

5. The plaintiff's case is that thereafter they received various claims from various persons, who are really entitled to receive the amount by way of dividend and/or interest and/or refund. The plaintiff

received four claims from the holders who were really entitled to receive the interest and/or dividend and/or refund aggregating to Rs. 1,32,000/-. The plaintiff thereafter took a decision that the rightful owners should be reimbursed the amounts paid by the plaintiff and wrongfully collected by defendant No.1 and or original defendant No.2. Accordingly, in respect of the 4 claims, the plaintiff paid the principal amount of Rs. 1,32,000/- and interest amounting to Rs.28,945/- aggregating to Rs. 1,60,945/-. The plaintiff took indemnities from them and in respect threof incurred stamp charges aggregating to Rs.80/-. The complaints received from various claimants and indemnities and stamp receipts are at Exhibit "C" (colly).

6. It is the case of the plaintiff that the plaintiff has suffered a loss to the tune of Rs.2,36,431.01 Ps. on account of the amounts wrongfully collected by defendant No.1 and original defendant No.2. A copy thereof is filed by the plaintiff. It is marked as Exhibit "D".

7. Thus, it is the case of the plaintif

that defendant No.1 and the original defendant No.2 have caused wrongful loss to the plaintiff, by receiving the amounts in the said account, which they were not entitled to receive and by making the plaintiff to pay the same to the real claimants. In the circumstances, it is the case of the plaintiff that defendant No.1 and the original defendant No.2 are liable to compensate the plaintiff for the amount received by defendant No.1 and original defendant No.2 in the said account. It is the case of the plaintiff that defendants are liable to repay to the plaintiff the sum of Rs.2,36,431.01 Ps. as per statement of account, annexed and marked Exhibit B, with further interest at the rate of 21.75% per annum from the date of filing of the suit till payment.

8. The defendants have been served. However, they have not chosen to contest the suit.

9. Having regard to the averments made in the plaint and in the affidavit in lieu of examination in chief, and the documents on record, in my opinion the plaintiffs are

entitled to a decree in terms of prayer Clause (a) of the plaint, with a modification that from the date of filing of suit till payment the plaintiff will be entitled to interest at the rate of 18% per annum.

. The plaintiff will be entitled to refund of court fees, if any, as per rules.

10. Suit is decreed accordingly.

Sd/-
[**Smt. RANJANA DESAI, J.]**